

### **REMARKS**

In response to the Office Action dated September 20, 2006, Applicants file herewith a Request for Continued Examination pursuant to 37 CFR 1.114 and a Response to the Office Action. Applicants respectfully requests reconsideration. The application is believed to be in allowable condition.

#### **Drawing Objections**

The drawings are objected to for including reference 120 which is not explicitly mentioned in the description. Applicant has added reference 120 to the description at page 13, line 10, as suggested. Applicant respectfully asserts that the drawings comply with 37 C.F.R. § 1.84.

#### **Claim Objections**

Claim 1 is objected to for a typographical issue which renders the claim confusing. Applicant has amended the claim by adding the word “of” on line 10.

#### **Claims**

Claims 1, 3-12, and 14-26 stand rejected under 35 U.S.C. § 101 as claiming the same invention as claims 1-24 of U.S. Patent No. 6,738,354 (the ‘354 patent). Applicant respectfully asserts that these claims are patentable in view of the ‘354 patent.

“A reliable test for double patenting under 35 U.S.C. § 101 is whether a claim in the application could be literally infringed without literally infringing a corresponding claim in the patent.” M.P.E.P. § 804(II)(A) (citation omitted). Claims 1, 12, and 22 of the present application could be literally infringed without literally infringing a corresponding claim in the ‘354 patent. For example, claims 1, 12, and 22 each recite an initial label availability indication which a person of ordinary skill in the art recognizes could be a formal structure for the organization of information, such as a list, queue, stack, array, hash table, or a tree. Claims 1, 12, and 22 could be infringed by a method using an indication of label availability not comprising a label list (as recited in the ‘354 patent) that includes one or more label identifiers. Thus, claims 1, 12, or 22 may be infringed without infringing a claim of the ‘354 patent, and thus

do not violate 35 U.S.C. §101. For at least these reasons, claims 1, 3-12, and 14-26 are patentable in view of the '354 patent.

Claims 1, 3, 12, 14, 22, 24, and 25 stand rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1, 2, 11, 12, 20, 22, and 23 of U.S. Patent No. 6,738,354 respectively. To overcome this rejection, a terminal disclaimer under 37 CFR 1.321 is presented with this paper. Thus, the obviousness-type double patenting rejection is believed to be overcome in light of the terminal disclaimer attached hereto.

Claims 4-11, 15-21, 23, and 26 stand rejected under 35 USC § 101 as claiming the same invention as claims 3-10, 13-19, 21, 24, 1, and 11, respectively of U.S. Patent No. 6,738,354. As shown above, independent claims 1, 12, and 22 may be infringed without infringing a claim of the '354 patent, and thus do not claim the same invention as that claimed in the '354 patent. Dependent claims 4-11, 15-21, 23, and 26 have been directly or indirectly amended such that they do not claim the same invention as that claimed in the '354 patent. For at least these reasons, claims 4-11, 15-21, 23, and 26 are patentable in view of the '354 patent.

### Conclusion

This application is believed to be in allowable condition, and a notice to that effect is respectfully requested. The Examiner is invited to call the Attorney at the number provided below with any questions.

Respectfully submitted,



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